IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 484 OF 2005

Shri S. Sitaram Aiyer..... ... Appellant.
Versus
Shri K. R. Aniyan Nair & Ors. ..... Respondents.

Mr. J. S. Kini for the Appellant.

None for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

The appeal is by unsuccessful plaintiff. The notice of motion taken out by the appellant / plaintiff has been dismissed by the learned trial Judge.

2. It is not in dispute that the appellant has put respondent No.1 in possession of the suit flat on receiving full agreed consideration in respect of the suit flat. Therefore, the learned trial Judge recorded a prima facie finding that respondent No.1 is in possession of the suit flat as owner thereof and therefore the appellant / plaintiff is not entitled to any relief of temporary injunction.

3. Shri Kini, learned Counsel appearing for the appellant, brought to my notice that in earlier suit filed by the appellant against respondent No.1, a decree for specific performance has been passed in favour of the appellant and in First Appeal preferred in this Court the execution of the said decree has been stayed by this Court. Shri Kini made a grievance regarding finding recorded by the learned trial Judge that respondent No.1 is occupying suit flat as owner thereof.

4. Considering the fact that respondent No.1 has paid full price of the flat to the appellant, learned trial judge was justified in declining to grant discretionary equitable relief of temporary injunction. The observations which are made by the learned trial judge in the impugned judgment and order are obviously prima facie observations and the trial
Judge shall not be influenced by the same at the trial. There is no merit in the appeal from order. Appeal is dismissed with no order as to costs.

5. As the age of the appellant is stated to be 87

years, the hearing of the suit is expedited.

Sd/-

(**A. S. OKA, J.**)